

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 427 OF 1995

IN

SPECIAL CIVIL APPLICATION NO. 3601 OF 1994

WITH

LETTERS PATENT APPEAL NO. 426 OF 1995

IN

SPECIAL CIVIL APPLICATION NO. 12921 OF 1994

AND

LETTERS PATENT APPEAL NO. 441 OF 1995

IN

SPECIAL CIVIL APPLICATION NO. 12921 OF 1994

For Approval and Signature:

Hon'ble MR. JUSTICE B.C. PATEL

AND

Hon'ble Mr. JUSTICE S. D. DAVE

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgment? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgments ? No

4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 of any Order made
thereunder ? No

5. Whether it is to be circulated to the Civil Judge
No

IN LPA NO.427 of 1995:

STATE OF GUJARAT

Versus

K.S. PRASAD & ORS.

IN LPA NO. 426 OF 1995:

STATE OF GUJARAT

Versus

S.S. MURTHY & ORS.

IN LPA NO. 441 OF 1995:

C.G. GOVINDAN

Versus

STATE OF GUJARAT & ORS.

Appearance:

In LPA No. 427 of 1995.

Mr. M.R. Anand, Ld. Government Pleader for Appellant State.

Ld. Counsel Mr. S.B. Vakil for Opponents-Ori.
Petitioenrs No. 1 to 34.

Ld. Counsel Mr.M.D. Pandya for Opponent No.35, Hob'ble
The Chief Justice of High Court of Gujarat.

In LPA No. 426 of 1995.

Mr. M.R. Anand, Ld. Government Pleader for Appellants
Ld.Counsel Mr.Mihir Joshi for Opponents No.1 & 2

Ld.Counsel Mr.D.R.Bhatt for Opponent No.3

Ld.Counsel Mr.M.D.Pandya for Opponent No.4

In LPA No. 441 of 1995

Ld. Counsel Mr. D.R. Bhatt for Appellant.

Mr. M.R. Anand, Ld. Govt.Pleader for Opponents No.1 &
2 State.

Ld.Counsel Mr.M.D.Pandya for Opponent No. 3

Ld.Counsel Mr.Mihir Joshi for Opponents No. 4 & 5.

CORAM: MR. JUSTICE B.C. PATEL and
MR. JUSTICE S.D. DAVE.

Date Of Decision: October 10 ,1996

CAV JUDGMENT.

PER: S.D. DAVE, J :-

In this Intra Court Appeals, we are concerned with the decision rendered by the Learned Single Judge (Our Esteemed Brother M.R. Calla, J) in Special Civil Application No. 3601 of 1994 with Special Civil Application 12921 of 1994, decided on 9th./10th. March 1995.

The said Special Civil Applications came to be allowed with the directions as under:-

- (i) The Chief Justice may consider the anomaly in the matters of pay scales of the Private Secretaries to the High Court Judges and the Private Secretaries attached to the officers drawing pay at Rs.8000/- in the Government Secretariat and keeping in view the observations made hereinabove, may consider as to what pay scales should be prescribed for the holders of the posts of Private Secretaries to the High Court Judges.
- (ii) In case the Chief Justice decides and prescribes that the pay scale of the Private Secretaries to the High Court Judges should be the pay scale of Rs.3000-4500 such pay scale shall be given to all the Private Secretaries to the Judges of the High Court as decided by the Chief Justice in accordance with the provisions of Article 229(2) of the Constitution of India and in accordance with the rules made by the Chief Justice in this behalf.

In our opinion, the fate of the present proceedings before us, hinges on the answer which can legally be provided to the question which may be [B formulated thus:-

Whether all the Private Secretaries attached to the Hon'ble Judges of this Court (who undisputedly draw the basic salary of Rs.8000/-) for the purpose of emoluments, can be or should be equated with those Private Secretaries

attached to the Secretaries of the State Secretariat, drawing the basic salary of Rs.8000/- per month (or less than that in some of the cases), though said to be falling within 10 % limit of the cadre strength and said to be promoted after a service span of 15 years, as the Anti Stagnation Measure ?

IN OTHER WORDS

Can the Private Secretaries, attached to the Hon'ble Judges of this Court, be precluded from claiming and receiving the benefits of the accepted principle of " EQUAL PAY FOR EQUAL WORK " on the basis of De Jure inequality arising out of 10 % and 15 years criteria, ignoring the principle of De Facto Equality ?

The petitioners in both the petitions were and are working as the Private Secretaries to the Hon'ble Judges of the High Court of Judicature of Gujarat at Ahmedabad. They seek and claim parity in the matter of pay scales and all other emoluments with the Private Secretaries working with the Secretaries to the Government of Gujarat, who draw the basic salary in sum of Rs.8000-00, excepting in a few cases.

The petitioners have said in these petitions that, they are English Stenographers, Grade-I (Class-II) and except the petitioner no.3 in Special Civil Application No. 12921 of 1994, all the petitioners are working as such from different dates commencing from October 16, 1982.

The case of the petitioners is that, the 4th Central Pay Commission came to be constituted on 1st. September 1983 to examine the then existing structure of emoluments and conditions of service, available to the Central Government Employees, Industrial and Non Industrial along with the personnel belonging to the All India Services, the Armed Forces and of the Union Territories. It was the arena of the inquiry and suggestions of the said Pay Commission to recommend and suggest the desirable and feasible changes. According to the Petitioners, the Central Government is organised into different Ministries and Departments each having a Secretariat. Secretariat posts are being manned by Officers from All India Services, Group A Central Services on Deputation and by the members of the Central Secretariat Services (CSS). The CSS was known by three

branch services, namely (a) Central Secretariat Services (CSS), (b) Central Secretariat Stenographers Services (CSSS), and (c) Central Secretariat Clerical Services (CSCS). Prior to Report of the Fourth Pay Commission dated January 01, 1986, there were, amongst the Stenographers (CSSS) four grades i.e. A, B, C & D. The Fourth Central Pay Commission had recommended the merger of both Grades A and B of CSSS so as to bring about a parity with CSS at that level and had recommended the scale of Rs.2000-3500 for posts in Grade A and Grade B. With a view to provide for further satisfactory promotional avenues for the members of the CSSS, the Pay Commission had recommended that the posts of Private Secretaries to the Secretaries to the Government of India may be upgraded and be placed in the scale of Rs.3000-4500.

According to the petitioners, in the High Court of Gujarat, they were working as Private Secretaries to the Hon'ble the Chief Justice and His Companion Justices. They were granted the Gazetted Status and their pay scale of Rs.650 - 1200 was recommended to be changed to Rs.2000-3500.

The Government of India, vide the Ministry of Finance Notification dated March 13, 1987, accepted the recommendations of the 4th. Central Pay Commission, namely that in the CSSS, the post of the Private Secretaries to the Secretary to the Government of India and equivalent officers may be upgraded and given the pay scale of Rs.3000-4500. The President of India sanctioned the said upgradation as noticed under the Government of India Office Memorandum dated October 07, 1987.

As a consequence, the Gujarat Sachivalaya and Allied Officers Stenographers Association had made a representation to the Government of Gujarat for creation of the post of Private Secretaries in the pay scale of Rs.3000-4500 as had been done in the Central Government. The Government of Gujarat had appointed a High Level Committee to examine the representation made by the aforesaid Association and having satisfied regarding the existence of a valid justification to upgrade, certain posts of Senior most Private Secretaries in the pay scale of Rs.3000-4500, the Government of Gujarat had resolved as under:-

- (i) Ten percent of the existing posts of Private Secretaries (English & Gujarati Stenographers Gr.I), on the Secretariat cadre, may be upgraded as Private Secretaries (Cl.I) and be given the

pay scale of Rs. 3000-100-3500-125-4500. These upgraded posts may be filled up by promotion from Private Secretaries (Stenographer Gr.I) on the basis of seniority-cum-merit. For becoming eligible to this grade, the incumbent must have put in at least 15 years of service as Stenographer Grade I.

(ii) Private Secretaries (Stenographers Gr.I English & Gujarati) on the Secretariat cadre, who have put in not less than 17 years service; of which 12 years in Gr. I and 5 years' in Gr.II; or 15 years' continuous service as Stenographer Gr.I in the case of direct recruits, may be promoted and placed in the higher pay scale of Rs.2500-75-2800-EB-100-4200."

The Resolution in this respect came to be issued by the Government of Gujarat on February 28, 1990. In the Secretariat, at the relevant time, there were in all 112 Private Secretaries, the break-up being 40 Gujarati Stenographers Grade-I and 72 English Stenographers Grade-I. Looking to the ten percent ratio fixed by the above said Resolution, the Private Secretaries numbering eleven were therefore found to be entitled to the benefits of the above said Resolution. But because of the two Petitions, one filed by Shri. T.R.S. Nair, registered as Special Civil Application No. 3164 of 1990 and the other one filed by Gujarat Secretariat & Allied Officers Stenographers' Association, registered as Special Civil Application No. 5337 of 1990, the implementation of the said Resolution of the Government dated February 28, 1990 was suspended.

Any how, on March 20, 1991 the Government of Gujarat had decided to revise the pay scale of ten percent existing posts of Stenographers Grade-I from Rs.2000-3500 to Rs.3000-4500 and thereafter, under the Resolution dated May 18, 1991, the standards for the upgradation of ten percent posts in the scale of Rs.3000-4500 and the appointment by promotion were accepted. The resultant effect was that, those ten percent of the post of Private Secretaries, working at the State Government Secretariat, existing on January 01, 1986 were required to be upgraded in the pay scale of Rs.3000-4500. It appears that, the Hon'ble The Acting Chief Justice of the High Court of Gujarat in exercise of His Lordship's powers conferred upon him under Article 229 of the Constitution of India, with the approval of His Excellency the Governor of Gujarat, directed the

substitution of the entries in the High Court Notification dated July 03, 1987 showing that the revised pay scale for Secretary to the Hon'ble The Chief Justice would be Rs.2500-75-2800-100-4200 and to Rs.4500-150-5700 for the then incumbent only. For the Private Secretaries, to the Hon'ble Judges of the High Court and English Stenographers Grade-I upto the limit of ten percent of the existing posts of Stenographers Grade-I, both Gujarati and English on the Establishment of the High Court, came to be upgraded as the Private Secretaries in the Pay scale of Rs.3000-100-3500-125-4500. It appears that a representation came to be submitted by some of the petitioners to the Hon'ble The Chief Justice through the Registrar on 5th March , 1990 for the grant of pay scale of Rs.3000-4500 to all the Private Secretaries to the Hon'ble Judges of this High Court, instead of 10 % of them only.

According to the Petitioners, the Private Secretaries to the Hon'ble Judges of the High Court of Delhi had filed a Writ Petition being C.W. No. 289 of 1991, claiming that, they should be placed in the pay scale of Rs.3000-4500, instead of the pay scale of Rs.2000-3500, which they were getting at the relevant time. Upon hearing the parties, the High Court of Delhi was pleased to issue a writ of mandamus to the Union of India and Others, calling upon them, to fix the salary of the Private Secretaries attached to the Hon'ble Judges of the High Court of Delhi, in the pay scale of Rs.3000-4500, with effect from 1st. January 1986. The said decision came to be carried before the Apex Court by filing the Special Leave Petition by the Union of India, which came to be dismissed on August 26, 1991.

The case of the petitioners before the Learned Single Judge was that, the work and the duties of the Private Secretaries to the Hon'ble Judges of this High Court would be equal, (i) to the work and duties attached to the post of Private Secretaries to the Secretaries of the Government of India and equivalent officers and, (ii) the Private Secretaries to the Secretaries to the Government of Gujarat, including the Chief Secretary and Principal Secretaries as also to the Private Secretaries to the Judges of the High Court of Delhi. Describing their duties, the petitioners have said in their petitions and have urged before the Learned Single Judge that, the pressure of work upon them, goes on increasing enormously, posing greater and greater challenge to their skill and ability. According to them, apart from taking dictations in the Courts as well as in the Chambers of

the Hon'ble Judges, the Private Secretaries were required to visit the residences of the Hon'ble Judges for dictation and transcription and they were required to carry out the necessary corrections in all the copies of the judgments and had to perform various other secretarial and confidential duties. According to them, since they were required to deal with the orders passed on the Judicial side, they were required to maintain high standards of secrecy and were required to act with utmost confidence. It was thus pleaded and canvassed before the Learned Single Judge by the petitioners that, the post of Private Secretaries to the Hon'ble Judges of this High Court would carry greater responsibility and would call for greater skill and efficiency.

According to the petitioners, at the Secretariat of the State of Gujarat, there were and are only few officers whose basic pay would be of Rs.8000-00 per month and not only the Private Secretaries attached to the said officers but even the Private Secretaries attached to certain officers and Secretaries who were not in the pay scale of Rs.8000-00 are also entitled to the basic salary in the pay scale of Rs.3000-4500 per month, because of the number game of 10 % rule.

Though no return came to be filed on behalf of the Hon'ble The Chief Justice, an affidavit-in-reply dated January 07, 1995 came to be filed by one Mr. V.B. Gandhi, the then Deputy Secretary, Legal Department to the Government of Gujarat. An affidavit-in-rejoinder came to be filed by the petitioners on January 11, 1995. The additional affidavit-in-reply came to be filed by one Mr. H.D. Chitara, Under Secretary to the Government of Gujarat. In the affidavits in reply a stand has been taken that the petitioners were Stenographers Grade-I (Class-II) in the pay scale of Rs.2000-3500 and that the said scale was required to be upgraded to the scale of Rs.3000-4500 pursuant to the recommendations of the 4th Central Pay Commission under the order of the Central Government dated October 07, 1987. It was sought to be contended that, the existing post of Private Secretaries to the Secretaries to the Government of India and equivalent officers were upgraded to the scale of Rs.3000-4500 with effect from 1st January 1986. The Government of Gujarat had constituted a High Level Committee under the Chairmanship of the Finance Minister to examine the matter regarding the pay and allowances of the employees of the Government of Gujarat and this High Level Committee had recommended that, only 10 % posts of the Private Secretaries working under the Government of Gujarat should be upgraded to the aforesaid pay scale of

Rs.3000-4500. This recommendation of the High Level Committee came to be accepted by the Government of Gujarat as reflected in the orders dated March 20, 1991 of the Finance Department, Government of Gujarat.

It was also pleaded and contended on behalf of the State that, this High Court also had asked for the upgradation of "ten percent posts" of Stenographers Grade-I only in the pay scale of Rs.3000-4500 and accordingly under the Government Resolution of Legal Department dated 19th November 1991, the recommendation of the High Court of Gujarat has been accepted and 10 % of the existing posts of Stenographers Grade-I came to be upgraded on the Establishment of the High Court and therefore, the petitioners were not justified in making a grievance that, they are not being treated at par with the Private Secretaries in the Government Secretariat. It was also pleaded and contended that, the demand of the pay scale of Rs.3000-4500 by all the Private Secretaries was not justified as only 10 % of the Private Secretaries of the Government Secretariat were getting the said pay scale and that too on the basis of the upgradation of 10% of the posts, which was done to open better avenues of promotion as recommended by the Fourth Central Pay Commission. It was also pleaded and urged by the State before the learned Single Judge that, an equal percentage of the posts of the Secretaries working at this High Court has been upgraded to the pay scale of Rs.3000-4500 as proposed by the High Court, and that, therefore, there did not appear to be a justification for the grievance made by the petitioners. It was also pleaded and urged by the State that, the scheme of higher pay scale by the interval of 9 years, 18 years and 27 years was also introduced, under which the incumbents would be entitled to higher pay scale in case of their stagnation.

It was broadly on the basis of the above said say that the prayer of the petitioners in the two petitions came to be combated by the State.

The Learned Single Judge, upon the consideration of various aspects, both factual and legal and upon a reference to the Delhi High Court pronouncement in Shri. P.N. Chopra And Ors. Vs. Union of India & Ors. 1981 (2) S L R, Delhi, pg.102 and in A.K. Gulati and another Vs. Union of India and Others, 1991 (6) S L R, pg. 423 was pleased to allow both the petitions. The ultimate orders pronounced by the learned Single Judge have been indicated by us at the beginning.

It requires to be appreciated that, in Special

Civil Application No. 12921 of 1994 one Shri. C.G. Govindan came to be added as the Petitioner No.3 at a later juncture. It was his case before the Learned Single Judge that, if at all the higher pay scale as prayed for by the petitioners were to be granted to the Private Secretaries to the Judges of the High Court, and if the same is to be granted with effect from 1st January 1986, he should not be deprived of the benefit of such a decision which would place him in the pay scale of Rs.3000-4500 from January 01, 1986, merely because at that time he was working in the City Court at Ahmedabad and came to be appointed as a Private Secretary in the High Court only after 1990. It was also his contention that, the criteria of giving the pay scale of Rs.3000-4500 to the Private Secretaries working with the Officers drawing pay scale of Rs.8000-00 was not correct, and that all the Private Secretaries whether attached with the Officers drawing the pay scale of Rs.8000-00 or not, should be given the higher pay scale of Rs.3000-4500. Learned Single Judge was pleased not to recognise the case of the newly added Petitioner No.3, by saying that, the said petitioner cannot be allowed to travel beyond the scope of the original Petition and that, the petitioner would not be entitled to such a higher pay scale with effect from 1st January, 1986, because he came to be born as a Private Secretary on the cadre of the High Court only in or after year 1990.

The State feels aggrieved by the orders of allowing the Petitions and therefore, they have filed the two Letters Patent Appeals indicated above. Shri. C.G.Govindan has filed the Letters Patent Appeal No. 441 of 1995, as he feels aggrieved with the above said orders of the Learned Single Judge. We have heard these three Appeals together and they shall stand decided and disposed of by the present Common Orders.

Learned Government Counsel Mr. Mahendra Anand appearing on behalf of the Appellant State in two Letters Patent Appeals has urged that, the Learned Single Judge has erred in placing reliance upon the two aforementioned decisions, as the said decisions are the decisions on facts and that, the fact situation there is entirely different from the fact situation obtaining at the High Court of Gujarat. It is the contention of the learned counsel for the appellants that, the principle of Equal Pay for Equal Work could not have been invoked in the facts & circumstances of the case before the learned Single Judge, because 10 % of the Private Secretaries working in the Secretariat of the State of Gujarat have been upgraded by way of promotion and have been made

entitled to the higher pay scale. It was also the contention coming from the learned Government Counsel, that the High Court through the Hon'ble Acting Chief Justice, at the relevant time, had also asked for a similar position, namely the upgradation of only 10% of the Private Secretaries to the High Court in the said pay scale and that, the same has been done. Learned Government Counsel therefore urges that, the Letters Patent Appeals filed by the State require to be allowed, and the orders under challenge require to be set aside and the petitions of the petitioners require to be dismissed.

As against this, learned counsel for the Respondents-Original Petitioners Mr. S.B. Vakil has urged that, no exception can be taken with the conclusion arrived at and the reasoning adopted by the learned Single Judge, because it is an accepted principle in Service Parlance that the employees would be entitled to Equal Pay For Equal Work. In the submissions of the learned counsel, the equality should be De Facto Equality and should stand apart in contra-distinction to the so called De Jure Inequality. Mr. Vakil urges with vehemence that, the work being rendered by the Private Secretaries to the Hon'ble Judges of the High Court of Gujarat, cannot be said to be less arduous either in industry or skill than that of the Private Secretaries attached to certain Officers in the State Secretariat. According to Mr. Vakil, the 10 % and 15 years criteria appear to be artificial and that, the basic criteria would be whether a particular Private Secretary puts in equal work when he is attached to a dignitary drawing the basic salary of Rs.8000-00 per month or not. In the submissions of Mr. Vakil, the claim of the petitioners could not be derecognised only on the ground of the said artificial criteria of 10 % and 15 years.

Mr. D.R. Bhatt, learned counsel for the appellant Shri. C.G. Govindan in Letters Patent Appeal No. 441 of 1995 has urged that, the learned Single Judge was at an error in coming to the conclusion that, the prayer made by the appellant in the petition could not be accorded to him. According to Mr. Bhatt, if the other Private Secretaries working at the High Court and/or to the Hon'ble Judges are to be given the benefit of the enhanced pay scale, the appellant should also get it retrospectively because he could not be deprived of the benefit, on the artificial ground that at the relevant time he was not born on the cadre of the Private Secretaries in the High Court. To these contentions coming from learned counsel Mr. Bhatt, the response of

the learned Government Counsel Mr. Anand is that, at any rate the appellant before us is not entitled to any relief whatsoever.

Before proceeding to examine and analyze the above said rival contentions it would, in our opinion, be profitable to visualise the Constitutional position and to appreciate the concept of "Equal Pay For Equal Work" in its true intent. While undertaking this exercise, the reference to Articles 14, 16 & 39 (d) appears to be necessary. This is especially so because, though Article 39 (d) finds its place in Part IV of the Constitution, captioned " Directive Principle Of State Policy " ; upon a conjoint reading of this Article with the previous two, a consistent trend in the Case Law has emerged, refusing to deny the benefits under the Doctrine of Equal Pay For Equal Work, being done by a citizen or a class of citizens.

Article 14 captioned as " Equality Before Law" , couched in a negative but prohibitory language, speaks of equality before the law and the equal protection of the laws. This one sentence article prohibits the State from denying any person equality before the Law or the equal protection of Laws. This prohibition being imposed upon the State, crystalises in the conferring of a right of equality, when the side of the coin is turned. The turned side of the coin, safeguards the citizens from any arbitrary action or injustice, resulting from the prohibited acts and deeds, the prohibition of which is moulded on the metal of the coin on its other side. These safeguards partake the nature, character and authority of Rule of Law, granting the citizens, an equal legal status.

Article 16, proclaiming " Equality of opportunity in matters of public employment " concentrates upon the right of a citizen in a smaller area of public employment. While Article 14 has a broad spectrum, Article 16 acts as focus on one of the many fields being covered under the broad wings of Article 14 and highlights the principle of equality of opportunities, for all citizens, in matters relating to employment or appointment to any office under the State. There is a clear bar of any discrimination of a citizen on the grounds of religion, race, caste or sex etc.

Article 39 (d), the last in sequence, enjoins upon the State to direct its policy towards securing equal pay for equal work for both men and women. A voice was being heard saying that the High Court acting under

Article 226 of the Constitution will not give a mandamus to enforce the directive principles of State Policy, but of late when it came to the reading of the aforesaid three Articles in juxtaposition, it has been also said that, Equal Pay For Equal Work is a right which can be enforced. The principle has not remained as merely a cherished " good " for the people. Various pronouncements, both of the High Courts and of the Apex Court, have demonstrated a consistent trend of a true recognition of the same. The recognition comes in a variety of cases, displaying different facts and circumstances annexed to them. Upon a careful analysis of the relevant facts and circumstances of the concerned case, the Courts have granted reliefs to the complaining citizen. The Courts, while doing so, have in fact asked for the establishment of facts showing the identical nature of posts and work or duties attached, calling for equal responsibilities and skill, thus rendering both the posts comparable with each other. The Courts while performing this exercise have also brought in lime light the fine distinction between De Jure and De Facto equalities and inequalities as the case may be. The Courts, instead of being impressed and guided by mere De Jure picture, have lifted the veil up, to see the De Facto graphics.

Keeping the above said principles in mind and the fact situation being obtainable in the present appeals, we would first like to see as to what the learned Single Judge has said in his orders under appeals. The learned Single Judge has noticed with great pertinence that the affidavit-in-reply filed by the State was conspicuously silent on the basic fact that, all the Secretaries to the Government, do not get the basic pay of Rs.8000-00 per month, whereas all the Hon'ble Judges of the High Court get the basic salary of Rs.8000-00 per month, and yet all the Private Secretaries to the Hon'ble Judges have not been placed in the higher pay scale of Rs.3000-4500. It is also noticed with equal pertinence by the learned Single Judge that, some of the Private Secretaries at the Secretariat are working with the Secretaries who do not draw the pay scale of Rs.8000-00 per month and yet with a view to fulfill the 10 % quota, such Private Secretaries have been placed in the pay scale of Rs.3000-4500. Thus, it appears that, in some cases the criteria regarding the basic pay of the Secretaries, namely Rs.8000-00 per month has been given a go bye. Upon hearing the counsels we are satisfied that certain Private Secretaries attached to Secretaries at the Secretariat, who are not getting the above said monthly basic salary of Rs. 8000-00 do get the benefit

of the higher pay scale. As against this, though all the Private Secretaries to the Hon'ble Judges of the High Court of Gujarat, get Rs.8000-00 as the basic salary per month, the petitioners are deprived of this benefit.

The contention coming from learned Government Counsel Mr. Anand is that, learned Single Judge was at an error in placing reliance upon two pronouncements of the Delhi High Court. Learned Single Judge indeed has firstly placed reliance upon the Delhi High Court pronouncement in Shri. P.N. Chopra & Ors. Vs. Union of India & Ors, SLR 1981 (2) Delhi, pg. 102. In this decision the Division Bench of the Delhi High Court has taken the view that, the denial to equate the Private Secretaries and Readers in the matter of pay and other benefits with that of the Private Secretary to the Chief Secretary, is an act of discrimination and arbitrariness at the hands of the Delhi Administration as well as Union of India and the same was violative of Articles 14 & 16 of the Constitution. The Delhi High Court has also held that, the impugned order fixing the pay scale of the petitioners at a lower level than that being given to the Private Secretary to the Chief Secretary could not be sustained and was required to be quashed. The said conclusion has been drawn by the Delhi High Court after an elaborate and careful analysis about the nature of the duties and the status of the Private Secretaries working at the High Court and the Private Secretary to the Chief Secretary working at the Secretariat.

The other decision on which the learned Single Judge has placed reliance is also the Delhi High Court [pronouncement in A.K. Gulati and another Vs. Union of India and Others, 1991(6) SLR, pg. 423. In that case, the petitioners before the Delhi High Court were the Private Secretaries attached to the Hon'ble Judges of the said Court. The claim in the writ petition was that, they should be placed in the pay scale of Rs.3000-4500 in stead of the pay scale of Rs.2000-3500. In June 1986 the F[ourth Central Pay Commission had given its recommendations and two of the recommendations were that, the Secretaries to the Government of India who were drawing a basic salary of Rs.3500-00 were entitled to receive a basic salary of Rs.8000-00. Clause 9.39 of the said Report further provided that, in order to provide satisfactory promotional avenues for members of the Central Secretariat Stenographers Service (C S S S)the posts of Private Secretaries to the Secretaries to the Government of India were to be upgraded and should be given the pay scale of Rs.3000-4500. The Government however had not revised the pay scale of the petitioners

despite the fact that, the then Chief Justice of the Delhi High Court had sent the necessary communication to the Minister of Law & Justice. The Delhi High Court pronouncement goes to say that, the right of the [petitioners to get the higher scale of Rs. 3000-4500 was based on the Report of the Fourth Pay Commission itself. The decision further says that, in addition thereto, the work which was being performed by the Private Secretaries to the Judges of the High Court was not less, but in fact was more onerous, arduous and confidential in nature, and therefore, the principle of Equal Pay For Equal Work was the second reason which should entitle the petitioners to succeed in the petition. Thus, this decision rendered by the Delhi High Court, ultimately confirmed by the Apex Court vide the orders dated August 26, 1991, would go to show that, the prayer of the petitioners came to be countenanced, because, firstly there was a Report of the Fourth Pay Commission itself, the second substantial reason being that the principle of Equal Pay For Equal [Work could be invoked, regard being had to the nature of work or duty.

Here in the instant appeals before us, the position is not different, but in our view, it is extremely similar. Here also we have the Office Memorandum dated October 07, 1987 issued under the signature of the Under Secretary to the Government of India, saying that, the recommendations of the Fourth Central Pay Commission, namely in the Central Secretariat Stenographers Service the post of the Private Secretaries to the Government of India and equivalent Officers may be upgraded and given the scale of Rs.3000-4500; and that, the same has been accepted by the Government vide the Ministry of Finance Notification dated May 13, 1987. We have also before us the Resolution adopted by the Government of Gujarat in General Administration Department under the signature of the Under Secretary to the Government of Gujarat, saying that, the recommendations made by the Finance Ministry have been decided to be kept in abeyance till the High Level Committee considers the representations of all the categories of the employees and the decision thereon is taken by the Government. Lastly, we have got the R[esolution dated February 28, 1990, issued in the name of the Governor Of Gujarat under the signature of the Under Secretary to the Government of Gujarat in General Administration Department. The Preamble of the said Resolution makes an interesting reading. The concluding portion of the first paragraph of the Preamble reads as under:

".... The representations made by the Stenographers' Association were examined by the Committee appointed by the Government for the purpose. After taking into consideration all the aspects and the points raised by the Sachivalaya Stenographers' Association in their representation and looking to the workload and responsibilities, etc. the Committee came to the conclusion that there is sufficient justification to upgrade certain posts of Senior-most Private Secretaries in the scale of Rs.3000-4500, equivalent to the number of officers of the rank of Additional Chief Secretaries and above in the Sachivalaya. "

The second paragraph of the Resolution may be reproduced thus :-

"...Considering the stagnation and very limited promotional avenues and with a view to providing motivation to the cadre of Stenographers, the Committee found it justified to recommend grant of higher pay-scale of Rs.2500-4200 to those Private Secretaries who fulfil the criteria stipulated in the resolution hereunder, till they become due for promotion to the senior posts in the pay -scale of Rs.3000-4500. "

It requires to be appreciated that the concluding portion of the first paragraph of the Resolution accepts and recognises the position that there was a sufficient justification to place the Private Secretaries in the pay scale of Rs.3000-4500. But the number of such posts should be equivalent to the number of the officers of the rank of Additional Chief Secretaries and above in the Sachivalaya. This would go to show that, as recommended by the Fourth Central Pay Commission the emphasis was upon the duties of the Private Secretaries who would be working under the Officers drawing a particular salary.

The second paragraph of the Preamble would go to show that, it has been incorporated only for the purpose of removing stagnation for other Stenographers who were recommended the pay scale of Rs.2500-4200. The second part says that, after careful consideration the Government has been pleased for the upgradation of the Private Secretaries and for the filling of the upgraded posts. The material part of the Resolution has been reproduced by us earlier. A reference to this Resolution would go to show that, 10 % of the existing post of Private Secretaries on the Secretariat cadre has been

upgraded to the cadre of Private Secretaries (Class-I) and they are to be placed in the pay scale of Rs.3000-4500. It is also said that, the upgraded posts may be filled up by promotion from Private Secretaries (Stenographers Grade-I) on the basis of Seniority Cum Merit and for becoming eligible to this grade, the incumbent must have put in atleast 15 years of service as Stenographer Grade-I. Thus, it would be sufficient to notice that, the claim of the petitioners has the origin in the recommendation made by the Fourth Central Pay Commission.

A conjoint reading of the above said portion of the Preamble and the operational part of the Resolution would go to show that, in fact the emphasis was upon the personnel or the officers who would be working on a particular rank in the Sachivalaya. This appears to be in consonance with the recommendation made by the Fourth Central Pay Commission, because therein also the emphasis was upon the Private Secretaries working under certain Officers or Secretaries of the high rank. The 10 % and 15 years service criteria appears to have been incorporated in the Resolution rather artificially because they run counter to the concluding portion of the first paragraph of the Preamble to which we have made a reference hereinabove. It could not be urged that, this criteria has been adopted for opening up the promotional avenues and for removing the stagnation. This has been precisely done by paragraph no.2 of the Preamble with neither we nor the petitioners appear to have been concerned. Thus, in our view the said emphasis on the criteria of 10 % and 15 years of service cannot be emphasized as has been done by the learned Government Counsel and on the said basis there could not be a negation of the principle of 'Equal Pay For Equal Work'.

Our attention has been drawn to the Allahabad High Court pronouncement in J.N. Mishra, and other, Petitioners V. State of U.P. and others, Respondents, 1990 LAB. I.C. 636. In that case before the Allahabad High Court, 51 Private Secretaries to the Hon'ble Judges of the High Court at Allahabad had filed the petition for the issuance of a writ of mandamus against the State of U.P. and others, praying for a parity of position and pay scale with that of the 7 upgraded Private Secretaries to the Hon'ble Judges of the High Court. It appears that, the State Government had sanctioned only 7 upgraded posts of the Private Secretaries attached to the Hon'ble Judges of the High Court with effect from July 01, 1979. It was the case of the 51 remaining Private Secretaries

that, the creation of two grades amongst the Private Secretaries, namely selection and non-selection grade was arbitrary and discriminatory. This case of the petitioners came to be recognised by the Allahabad High Court, holding that, the creation of two grades was in fact arbitrary and discriminatory and therefore consequently all the Private Secretaries attached to the Hon'ble Judges of the High Court, were entitled to the same grade with effect from the due date.

While coming to the above said conclusion, the Allahabad High Court has recognised the principle of Equal Pay For Equal Work. A reference was made to the Supreme Court decision in Randhir Singh v. Union of India (1982) 1 SCC 618. The Supreme Court was pleased to say thus:-

".... The principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Art. 39 (d) the Constitution proclaims 'equal pay for equal work' for both men and women as a Directive Principle of State Policy. 'Equal pay for equal work' for both men and women means, equal pay for equal work for everyone and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clause of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. "

The Allahabad High Court has also referred to and has placed reliance upon the Supreme Court pronouncement in case of Supreme Court Employees Welfare Association v. Union of India (1989) 3 JT, 188. The Supreme Court has said thus in respect of the doctrine of " Equal Pay For Equal Work."

"....although the doctrine of 'equal pay for equal work' does not come within Art. 14 of the Constitution as an abstract doctrine, but if any classification is made relating to pay scales and such classification is unreasonably and/or if unequal pay has brought about discrimination within meaning of Art. 14 of the Constitution it will be a case of 'equal pay for equal work', as envisaged by Art. 14 of the Constitution. If the classification is proper and reasonable and has a nexus to the object sought to be achieved the doctrine of 'equal pay for equal work' will not have any application even though the persons doing the same work are not getting the same pay."

Allahabad High Court decision in case of J.N. Mishra and other (supra) also speaks of Supreme Court pronouncement in case of P. Savita v. Union of India, 1985 Supp SCC 94. In that case, the prescription of two scales of pay for senior draftsmen working in the same department was assailed. The Supreme Court has accepted the challenge and has observed as under:-

"... Where the relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently. "

Thus, the Delhi High Court decision in case of A.K. Gulati and another (supra) in our view applies to the appeals on hand with all fours. The claim made by the original petitioners requires to be accepted on the twin principle of the recommendation made by the Fourth Central Pay Commission and the principle of Equal Pay For Equal Work. More over, the other decisions, to which we have made the reference above, would go to indicate that, the petitioners are perfectly justified in asking for the same scale as is available to 10 % of the Private Secretaries of the State Secretariat and 10 % of the Private Secretaries working on the establishment of this High Court, on the basis of the principle of Equal Pay For Equal Work.

More over, it should not escape the notice of the Judicial Conscience that the petitioners are made to suffer the dual discrimination. The petitioners do not get the higher pay scale which is being given to 10 % of the cadre strength of the Private Secretaries at the State Secretariat. But in the same way, there is a

further discrimination amongst the Private Secretaries on the establishment of this High Court, because, 10 % of them have already been placed in the scale which the petitioners are praying for. Nobody can say that the work of the petitioners would be even slightly or remotely different from the work being put in by those 10 % of the Private Secretaries on the establishment of this High Court. The case of the original petitioners therefore appears to be doubly strong to us.

When a reference is made to the part of the Resolution indicated by us earlier, it appears that, the Government was pleased to decide upgrading of 10 % of the existing post of Private Secretaries (English & Gujarati Stenographers, Grade-I) on the Secretariat cadre as the Private Secretaries (Class-I), and they were given the pay scale of Rs. 3000-4500. The Government has also resolved that, this upgraded posts made be filled in by promotion from Private Secretaries (Private Secretaries Grade-I, Class-II) on the basis of Seniority Cum Merit and for becoming eligible to this grade, the incumbent must have put in 15 years of service as Stenographer Grade-I. Interpreting this part of the Government Resolution, learned Government Counsel Mr. Anand has urged that the said one is a case of upgradation and promotion and that also from amongst the eligible people who have put in atleast 15 years of service as Stenographer Grade-I. With a view to counter this contention coming from learned Government Counsel, there have been the efforts on the part of learned Counsel Mr. Vakil to demonstrate that, all what has been said in the Government Resolution regarding the upgradation , promotion and past service appear to be artificial, because the real question to be considered and decided is, as to whether there is a De Facto Equality between the petitioners on one hand and the Private Secretaries attached to the Secretaries at the State Secretariat. With a view to gain support for this contention, learned counsel Mr. Vakil firstly places reliance upon the Supreme Court pronouncement in State of Sikkim, Appellant v. Surendra Prasad Sharma and others etc. etc., Respondents., A.I.R. 1994 S.C. Pg. 2342. A short but interesting question regarding the true scope and meaning of Rule 4(4) of the Sikkim Government Establishment Rules, 1974, was before the Supreme Court. The Supreme Court has pointed out that, it is well settled that when Article 14 of the Constitution prohibits discrimination and requires that all persons subjected to any legislation shall be treated alike, it does not forbid classification for implementing the right of equality guaranteed by it, provided the classification is based on

an intelligible differentia.

Supreme Court also says thus :-

".... Differential treatment becomes unlawful if it is arbitrary and not based on rational relation with the statutory objective. The emphasis is not only on de jure equality but also on de facto equality. "

The emphasis supplied by the Supreme Court makes it abundantly clear that, whenever the question arises regarding the equality or inequality, the de jure equality or the de jure inequality only are not to be seen, but the emphasis should be on de facto equality or de facto inequality.

Before going to the case law on which the learned Government Counsel has placed reliance, we must say that, we are aware of the principle that equation of post and equation of pay are matters primarily for the executive and expert bodies like Pay Commission and not for the Courts. But the principle is also that where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to a different department. The question would be otherwise if the Officers of the same rank perform the similar functions with different powers and duties. This principle has been accepted in the Supreme Court pronouncement in Randhir Singh v. Union of India, A I R 1982 S C, 879. The decisions rendered thus far have also made it clear that, the doctrine of Equal Pay For Equal Work is a fundamental principle in service parlance, but the equal pay must depend upon the nature of the work done. It cannot be judged by the mere volume of work because there may be qualitative difference as regards reliability and responsibility. Nobody can seriously urge that the nature of the work and the duty between the petitioners and the Private Secretaries attached to the Secretaries drawing Rs.8000-00 at the Secretariat would be different either in quality or responsibility. This fact, according to us, appears to be weightily sufficient for us to come to the conclusion that a parity requires to be drawn between the petitioners and the said Private Secretaries.

Learned Government Counsel Mr. Anand has placed heavy reliance upon the Supreme Court pronouncement in Anant Mills Co.Ltd. v. The State Of Gujarat And Others, 16 G L R, Pg. 418. The question raised before the

Supreme Court therein, was relating to the constitutional validity of the different provisions of the Bombay Provincial Municipal Corporations Act, 1949, as amended by Gujarat Acts No. 8 of 1968 and No. 5 of 1970. Para No. 25 at page 434 says that, " It is well-established that Art. 14 forbids class legislation but does not forbid classification. Permissible classification must be founded on an intelligible differentia which distinguished persons or things that are grouped together from others left out of the group, and the differentia must have a rational relation to the object sought to be achieved by the statute in question." Placing reliance upon this say of the Supreme Court, learned Government Counsel Mr. Anand has urged that, a permissible classification, founded on an intelligible differentia is an accepted phenomena in the field of law, despite Article 14 of the Constitution. We are in agreement but only in part with the contention coming from learned Government Counsel. We are required to differ on the basis of the facts & circumstances of the case on hand. There cannot be a quarrel with the principle that there could be a permissible classification, but it must be founded on an intelligible differentia. We have failed in our search for any intelligible differentia which would distinguish the case of the petitioners from that of the 10 % of the Private Secretaries at the State Secretariat. We are not able to subscribe to the view that, merely because there is a limit of 10 % of the total cadre strength, and the experience criteria of 15 years the case of the petitioner could be distinguished. The 10 % ratio adopted by the Government would include a particular number of Private Secretaries but all the Secretaries to whom the services of such Private Secretaries could be provided does not match with the number to be culled out under 10 % ratio. The resultant effect is that, some Private Secretaries are found to be working with the Officers who do not draw the basic salary of Rs.8000-00. The whole emphasis should be on the nature of the duty which could be judged on the basis of the question, namely as to who are the Officers under whom they are working. If 10 % of the cadre strength of the Private Secretaries of the Secretariat are working with the Secretaries drawing the monthly salary of Rs.8000-00, there is no reason as to why the petitioners also could not be given the same treatment in the salary and other emoluments. As has been pointed out by us earlier, the petitioners are the victims of double discrimination because 10 % of the cadre strength of the Private Secretaries of the High Court who are to the Hon'ble Judges also get the similar treatment in pay and other emoluments as the 10 % of the Private Secretaries

of the State Secretariat.

The tenacious contention coming from learned Government Counsel Mr. Anand that, there could be a bifurcation of cadre and that a higher cadre could be created to provide the channel of promotion and to remove the stagnation and that while doing so, the doctrine of equal pay for equal work would not come in the way of the State is being buttressed with the assistance of the Supreme Court pronouncement in State of West Bengal and others, Appellants v. Deb Kumar Mukerjee and others, Respondents. AIR 1995 S.C. Pg. 1889. The said pronouncement of the Apex Court while considering Articles 39(d) and 15 of the Constitution of India permits the bifurcation of cadre. It was a case in which the cadre of Inspectors in the Housing Department was bifurcated and a higher grade in the cadre of Inspectors was created with a view to provide channel of promotion and to remove stagnation in the cadre. It was provided that 20 % of the posts in the cadre could be upgraded and given higher pay scale and the higher grade posts were to be filled in by way of promotion from amongst the Inspectors holding the lower grade. The Supreme Court has said that, the classification in the cadre on the ground of selection post, on merit, is permissible and it is well known in Service Jurisprudence that selection grade and super time scale based on seniority or seniority-cum-merit are permissible. The main contention of the original petitioners before the High Court of Calcutta was that, the maintenance of two grades in the cadre of Inspectors was violative of the principle of Equal Pay For Equal Work as the Inspectors Grade-I and Grade-II were performing similar duties and that their posts were interchangeable. The Government orders dated June 04, 1965 had shown that the higher grade in the cadre of Inspectors was created with a view to provide channel of promotion and to remove stagnation in the said cadre. The Supreme Court after laying down the principle as indicated by us, has said that, the High Court had fallen into patent error in setting aside the classification on the ground of discrimination.

The order dated June 04, 1965, would go to show that the question of improvement in the prospect of promotion of the Inspectors, employed in connection with implementation of the Housing Schemes, was under consideration of the Government for some time and after considering the question, the Governor was pleased to sanction aforementioned cadre of the Inspectors Grade-I and Inspectors Grade-II under the Housing Department. The text of the order reproduced by the Supreme Court at

para-2 on page-1890 itself would go to show that, it was essentially a question of promotion to be granted to the Inspectors working under the Housing Scheme.

More over as a result of the First Pay Commission in the year 1971 the pay scale of Rs.300-600 was given to Inspectors Grade-I and Pay scale of Rs.230-425 was given to Inspectors Grade-II. The Second Pay Commission in the year 1981 had examined the question thoroughly and on the basis of the material placed before it, had recommended the continuance of the two grades. The Third Pay Commission in year 1990 had further maintained the status quo regarding the Inspectors. Keeping in view the recommendations of various Pay Commissions constituted from time to time the State Government had come to the conclusion that, two grades in the cadre of Inspectors were to be maintained.

Thus, it appears that all what was done by the Government of West Bengal by order dated June 04, 1965 was in consonance with atleast three Pay Commissions. Here before us the case is entirely different. The Fourth Central Pay Commission, after examining the existing structure of emoluments and conditions of service available to employees, had recommended that there should be merger of both the grades, namely A & B of C S S S, so as to bring about a parity with C S S at that level, and with a view to provide for further satisfactory promotional avenues for the members of the C S S S, the Pay Commission had recommended that the post of Private Secretaries to the Secretaries to the Government of India may be upgraded and be placed in the scale of Rs.3000-4500. It is therefore clear that, in the case on hand the Fourth Central Pay Commission has recommended the above said scale. The question was regarding the granting of the above said pay scale to the Private Secretaries working at the Secretariat. During this process it appears that the above said Resolution came to be adopted by the Government. In other words, what the petitioners are claiming before us and had in fact claimed before the learned Single Judge has been recommended by the Fourth Central Pay Commission. The Government of West Bengal in the above said decision was acting in a manner so as to follow the say of various Pay Commissions. Here also the petitioners are asking for the revision as recommended and suggested by the Fourth Central Pay Commission. It is therefore clear that, the decision of the Supreme Court in case of State of West Bengal & Ors (supra) cannot advance the case of the State before us further because, therein the Government was doing what was being recommended by various Pay

Commissions. On the other hand, in the case of the petitioners before us, the Government is doing something which is not only, not recommended by the Fourth Central Pay Commission, but which runs counter to the say of the Fourth Central Pay Commission.

Learned Government Counsel has also drawn our attention to an unreported decision rendered by the High Court of Kerala at Ernakulam in O.P.No. 2716 of 1994, decided on 22nd day of March 1995. It was a case in which the employees of the High Court of Kerala were claiming that they are entitled to pay or salaries as applicable to the employees of the Delhi High Court and of the Supreme Court of India. Taking into consideration various legal and factual aspects, the Kerala High Court has taken a view that the claim of the petitioners for parity of treatment with the employees of the Delhi High Court and of the Supreme Court was totally misconceived. This conclusion is based upon various factors like, nature of the duties, the service conditions, the pay scale and locus where the employees of the State High Court and Supreme Court would be located. More over the decision is also based upon the reading and interpretation of the Kerala State Service Rules, 1970. This decision therefore does not render any assistance to the appellant State in advancing their case before us.

A reference also requires to be made to the Supreme Court pronouncement in case of Jaipal and others, Petitioners v. State of Haryana and others, Respondents, A.I.R. 1988 S.C. pg. 1504. The doctrine of equal pay for equal work has been talked of, by the Supreme Court in the following manner.

"... The doctrine of equal work equal pay would apply on the premise of similar work but it does not mean that there should be complete identity in all respects. If the two classes of persons do same work under the same employer with similar responsibility under similar working conditions, the doctrine of 'equal work equal pay' would apply and it would not be open to the State to discriminate one class with the other in paying salary. "

One more Supreme Court decision which could be cited in favour of the petitioners is the Supreme Court pronouncement in Grah Kalyan Kendra Workers' Union v. Union of India, A.I.R. 1991 S.C. pg. 1173., which lays down that, for application of the principle of equal pay for equal work, the similarity of responsibilities need

not be equal with mathematical accuracy, and if in a broad concept they are similar, it is sufficient.

The Supreme Court pronouncement in Randhir Singh v. Union of India, (1982) 3 S.C.R. Pg. 298, which speaks regarding the equation of posts and equation of pay, says thus :-

"... Equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies and not for the Courts, but where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. "

The Supreme Court pronouncement in Federation of All India Customs and Central Excise Stenographers (Recognised) and others, Petitioners v. Union of India and others, Respondents, A I R 1988 S.C. Pg. 1291 requires a consideration. This decision in terms says that, equal pay for equal work is a fundamental right. After saying so, the Supreme Court points out that, equal pay must depend upon the nature of the work done and it cannot be judged by the mere volume of work. According to this Supreme Court decision, the functions may be the same but the responsibilities make a difference. Moreover, as made clear, so long as value judgment is made bona fide, reasonably or on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. After having said so, the Supreme Court also says thus:-

".... Where the differentiation in the pay scales of stenographers in the Customs and Excise Departments and their counterparts in the Central Secretariat before the report of the Fourth Pay Commission was not sought to be justified on the similarity of the functional work but on the dissimilarity of the responsibility, confidentiality and the relationship with public etc. It was held that it could not be said that the differentiation was based on no rational nexus with the object sought for to be achieved."

In our view, ultimately this Apex Court decision would go to help the original petitioners, namely the

respondents before us in as much as we do not find a justifiable differentiation, sought to be culled out by the State, in view of the fact that, the nature and the type of the work done by the petitioners also in its entirety would be similar to that of the 10 % of the Private Secretaries attached to the Secretaries at the State Secretariat. We have failed in our search to find out the differentiation which could be said to be based upon the intelligible differentia or basis, which again should be justifiable.

Lastly, the unreported decision rendered by the High Court of Allahabad in case of Private Secretaries & Personal Assistants Brotherhood, High Court, Allehabad, through its Secretary and another Vs. State of Uttar Pradesh and others, in Civil Misc. Writ Petition No. 1408 of 1993 also puts an end to the controversy in favour of the respondents, who are the original petitioners. The said decision rendered on 21st. December 1993 concludes that, the similar claims of the petitioners were liable to be allowed and ultimately a writ of mandamus came to be issued to the respondents, directing them to fix immediately the salary of the Private Secretaries in the pay scale of Rs.3000-4500. This decision came to be confirmed by the Apex Court under the orders dated March 26, 1996, as the Special Leave Petition filed by the State of Uttar Pradesh came to be dismissed on merits.

Thus on the examination of the factual and legal position presented before us, we are of the opinion that, the Private Secretaries to Hon'ble Judges of this Court should be equated for the purpose of all the emoluments with the Private Secretaries attached to the Secretaries to the State Secretariat drawing the basic salary of Rs.8000-00 per month (or less than that in some of the cases), though said to be falling within 10% limit of the cadre strength and said to be promoted after a service span of 15 years. In other words, in our opinion the Private Secretaries to Hon'ble Judges of this Court cannot be precluded from claiming and receiving the benefits of accepted principle of Equal Pay for Equal Work.

We are thus in full agreement with the decision rendered by the Learned Single Judge in both the petitions along with the reasonings adopted thereunder. In our view both the appeals filed by the State require to be dismissed. We order accordingly.

In our opinion the appellant Shri. C.G.

Govindan in Letters Patent Appeal No. 441 of 1995 has no case. The appellant who happens to be the added petitioner No.3 in the petition was asking for his placement in pay scale of Rs.3000-4500 from 1st January 1986. His say was that, though at that time he was working at the City Courts at Ahmedabad and came to be appointed as Private Secretary in this Court after 1990, he should get the available benefit with effect from 1st January 1986. The contention coming from learned counsel Mr. D.R. Bhatt for the appellant is that, the benefit should go to him for that period during which he was not born on the cadre of the Private Secretaries working at the High Court. This contention cannot be accepted for the simple reason that, the appellant came to be born in the cadre of Private Secretaries of the High Court only in the year 1990. By no parity of reasoning he could be awarded the benefit for the period during which he was working elsewhere and was not in the cadre of Private Secretaries of the High Court. We are, therefore of the opinion that the Letters Patent Appeal No. 441 of 1995 requires to be dismissed. We order accordingly.

There shall be no order as to costs in respect of the present Letters Patent Appeals.

Before parting, it requires to be appreciated that, at the conclusion of his arguments, learned Government Counsel Mr. Anand had made an oral statement before us. The making of this statement by learned counsel Mr. Anand was necessitated by the fact that, after the pronouncement of the Orders by the learned Single Judge in the two petitions, necessary recommendations were made by the Hon'ble The Chief Justice. We had preferred to record the statement, coming from the learned Government Counsel in his own words with the necessary precision. We reproduce what all was said by the learned Government Counsel Mr. Anand at the bar as an oral statement.

The text of his statement runs thus :-

"His Excellency The Governor Of Gujarat has concurred with the view of the Government that, the Private Secretaries attached to the Judges of the High Court of Gujarat cannot be given the pay scale of Rs.3000-4500 beyond what is permissible under the present rules and the Government resolution. "

After the above said statement came to be made by Mr. Anand, and came to be recorded by us, learned counsel for the original petitioners Mr. Vakil had expressed the view that, probably his clients would like to move the necessary amendment applications for amending the pleadings of the petitions. Later on Mr. Vakil has filed a note dated September 11, 1996, saying that, the respondents, that is the original petitioners do not propose to make any such application. The note further says that, the matters should be placed before us for appropriate orders.

The learned counsels had thereafter said that, we should proceed to pronounce the orders in the present proceedings, which we have done.

Dt: 10th October, 1996.

After the aforesaid orders were pronounced, a plea comes from Ld. Government Counsel Mr. Anand, saying that, the implementation and execution of our orders should be stayed for a particular time frame so as to enable them to approach the appropriate forum by taking out appropriate proceedings, if necessary. We should clarify that during the pendency of these appeals also there have been no interim orders. We have simply dismissed the appeals. We have not given any fresh direction or orders. In our view, therefore, the plea coming from Ld. Government Counsel Mr. Anand does not appear to be requiring any recognition on our part.

DT: Oct.10,1996. (B.C. Patel, J)

(S.D. Dave, J)

